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March 9, 2000

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VIA HAND-DELIVERY

Mr. Christopher Wright
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**Re: *Ex Parte* Statement CC Docket 99-200, CC Docket 92-237,
Reference *Ex Parte* filing by MCI Worldcom of March 1, 2000**

Dear Messrs. Wright and Strickling:

On February 16, 2000, Telcordia Technologies, Inc. ("Telcordia") submitted an *ex parte* letter to the Federal Communications Commission ("FCC") identifying three fundamental flaws in the North American Numbering Council's ("NANC's") recent recommendation to the FCC regarding the sole source award of the Thousand-Block Pool Administrator ("PA") contract to the current North American Numbering Plan Administrator ("NANPA"). On March 1, 2000, MCI Worldcom ("MCI") submitted an *ex parte* rebuttal indicating its support for the non-competitive award of the PA contract to the current NANPA. Telcordia hereby responds to MCI's commentary, and again encourages the FCC to reject the NANC's recommendation and allow qualified companies to compete for the PA contract.

In its March 1 comments, MCI posits three bases for its position that the FCC should award the PA contract to the existing NANPA on a non-competitive basis. Specifically, MCI argues that: 1) a non-competitive award is most convenient for industry and the FCC and will not violate the Administrative Procedure Act, 5 U.S.C. §§551 *et seq.*; 2) there is conflicting caselaw regarding the indirect funding of government contracts and therefore this is not a procurement subject to the Competition in Contracting Act, 41 U.S.C. §§251 *et seq.*; and 3) the NANC recommendation is not illegal under the Federal Advisory Committee Act, 5 U.S.C. App. 2, §§ *et seq.*, since

the FCC has not yet accepted and acted upon it. However, as discussed below, MCI's arguments and conclusions are as fundamentally flawed as the anti-competitive NANC recommendation that MCI – usually a firm advocate of competition – seeks to support.

**MCI SEEKS TO SUBSTITUTE TRANSITORY INDUSTRY CONVENIENCE
FOR THE LONG TERM PUBLIC BENEFITS OFFERED BY COMPETITION**

As discussed in Telcordia's February 16 comments, a non-competitive award of the PA contract is inconsistent with longstanding FCC policy, regulations, and federal law. MCI substantially concedes this point, accepting the basic premises that underlie the government's reliance on competition as a means of effectively managing the telecommunications arena. MCI then summarily dismisses these principles of competition, arguing that the NANC's recommendation was substantively correct.

MCI argues that because the NANC is technically competent and knowledgeable about the issues facing number pool administration, the FCC should accept its recommendation to appoint the PA without competitive bidding. MCI simply begs the question. The issue facing the FCC is not whether the NANC is competent to advise on issues involving number pooling. Rather, the issue is whether 1) a council of industry specialists operating as a Federal Advisory Committee should award and administer a government contract pursuant to a closed-door process, or 2) should the FCC procure the required services pursuant to a full and open competition among qualified companies. In this regard, it is nearly universally accepted that competition produces more innovative, more efficient, and less costly goods and services. MCI argues, nevertheless, that the FCC should accept the NANC's recommendation because 1) the NANC recognized the "synergies" inherent between CO Code Administration and Thousand-Block Pool Administration, and 2) a competition will unnecessarily delay the award of the PA contract.

MCI's emphasis on the "synergies" between CO Code Administration and Thousand-Block Pool Administration is misplaced. Technological "synergy" in this context is merely a euphemism for the consolidation of various elements of an industry, i.e., monopolization. While monopoly control of an industry might benefit certain segments of that industry, logic and experience show that monopolies tend to stifle technological innovation, eliminate the incentives necessary to strive for ever-increasing efficiency and quality, and ultimately prove detrimental to the public at large. Ironically, the telecommunications industry recently dispensed with the monopolistic model in the common carrier field. To move towards a monopolistic model in the field of number resource administration would be both as short sighted and illegal as continuing the pre-divestiture Bell System as a monopoly because it operated with "synergies."

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In any event, MCI's dramatic claims of "synergy" are unfounded. The new PA, for example, regardless of whether it is the NANPA or another contractor, will have to install identical equipment, such as new interfaces, in order to perform the PA contract. Far from a mere extension of CO Code Administration, Thousand-Block Pool Administration is a discrete enterprise requiring new hardware, new software, and new management and administrative protocols that are as easily produced by a new contractor as by the NANPA. More importantly, any of the supposed advantages inherent in awarding the PA contract to the incumbent NANPA would be considered and weighed against a competitor's advantages in a competitive bid. In the end, a competition is the only means by which the FCC can reasonably evaluate the advantages and disadvantages of various proposed methods of performance, including awarding the PA contract to the existing NANPA.

MCI also argues that competition should be avoided because it would take too long. MCI is incorrect – for a number of reasons. In fact, a competitive bid for the PA contract can be accomplished in an unusually short time-frame under the circumstances of this procurement. First, the FCC will not have to develop a Request For Proposals or similar document. The NANC has already drafted the technical requirements for the PA function, and while the NANC has not made the technical details available to bidders other than NueStar, were the FCC to make this information publicly accessible, qualified bidders would be able to develop proposals responsive to these requirements. Second, qualified competitors will likely be able to generate proposals well within any time-compressed deadline set by FCC. For example, as discussed in a letter to the NANC of April 10, 1998 (attached hereto), Telcordia has been seeking to compete for the PA contract for a number of years. Moreover, as noted in its letter of February 18, 2000 to the FCC, as well as in its March 2, 2000 technical review with the FCC, Telcordia has demonstrated that it is capable of preparing and submitting a qualified bid on an expedited basis. Other potential bidders may well have similar capabilities. The FCC, in short, can undertake and complete a competition for the PA function within a very short period of time.

Experience and common sense dictate that competitive bidding is necessary to ensure the most efficient and most innovative solutions to meet the public need. MCI's only substantive complaint in this regard is the bald assertion that significant delay will accompany any competitive bid. As noted, MCI is simply incorrect, and the FCC can conduct a full and open competition, and make an award, on an expedited basis. On the existing record before the FCC, any action other than a full and open competition to award the PA contract will clearly violate the Administrative Procedure Act.

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**THE NANC RECOMMENDATION VIOLATES
THE COMPETITION IN CONTRACTING ACT**

As discussed in Telcordia's February 16 comments, the award of the PA contract is subject to the Competition in Contracting Act ("CICA"), and CICA requires that the FCC conduct a competitive bidding process for this requirement. In this regard, CICA cannot be avoided merely by grafting the duties of the PA contract onto NANPA's existing contract. MCI does not take issue with these propositions, but focuses on the funding structure of the PA, arguing that because no public funds are allegedly being used to procure the equipment and services at issue, then the FCC is not conducting a procurement subject to CICA. MCI, however, fails to address the U.S. General Accounting Office ("GAO") caselaw cited in Telcordia's February 16 comments, which demonstrates that GAO will take protest jurisdiction over this type of transaction, based upon the terms and conditions set forth in the December 22, 1999 Requirements Document. Recent GAO caselaw indicates that GAO has continued to review protests concerning no-cost contracts that do not involve the expenditure of public funds where beneficial services are provided and the services further the function of an agency. See N & N Travel & Tours, Inc., B-283731.2 (December 21, 1999); Simplix, B-274388, 96-2 CPD ¶216. Moreover, the GAO has on several occasions reviewed the propriety of agency action where the protester has alleged that the agency was improperly channeling a requirement through a non-federal entity in order to avoid applicable procurement statutes and regulations. See Premiere Vending, B-256560, 94-2 CPD ¶8. Further, MCI's citation to the legislative history of CICA is simply wrong. The referenced page of the Senate Report cited by MCI states as follows:

The last, and possibly the most important, benefit of competition is its inherent appeal of 'fair play.' Competition maintains the integrity in the expenditure of public funds by ensuring that government contracts are awarded on the basis of merit rather than favoritism.

Clearly, this reference to "public funds" was in no way intended to limit the applicability of CICA.

Finally, MCI hedges its position with regard to CICA by arguing that in any event, the PA contract could fall within an exception to CICA, wherein a competition need not be held for a follow-on contract for the continued development or production of a major system or highly specialized equipment if it would result in an "unacceptable delay" in fulfilling the agency's needs. See 41 U.S.C. §253(d)(1)(B). Clearly, the PA contract does not fall within this limited statutory exception. In fact, the NANC has had

years to develop the December 22, 1999 Requirements Document. Throughout this period of development, and in the more than two months since releasing the Requirements Document, the NANC has failed to make preparations necessary to compete the contract. MCI now attempts to argue that the PA contract cannot be competed because there is "no time" left to do so. The law, however, will not allow an agency to neglect its obligations with regard to competitive procurement and then claim that, as a result, it has no time to administer a competition. See Techno-Sciences, Inc., B-257686, Oct. 31, 1994, 94-2 CPD ¶ 164 (agency improperly extended contract on a sole-source basis where extension was necessitated by agency's own failure to diligently plan for a follow-on procurement); New Breed Leasing Corp., B-274201 et al., Nov. 26, 1996, 96-2 CPD ¶ 202 (sole source contract extensions were improper where agency failed to recognize and correct obvious flaws in solicitations and contracts in sufficient time to avoid sole-source extension).

In any event, MCI's position here is factually incorrect. As discussed above, the FCC can administer a competitive bidding process for the PA contract well within any time frame it can reasonably claim is necessary. There need not be any "unacceptable delay" here.

**MCI CONCEDES THAT THE NANC'S ROLE IN THOUSAND-BLOCK
POOL ADMINISTRATION AS CURRENTLY ARTICULATED IS ILLEGAL**

MCI does not take issue with Telcordia's conclusion that NANC's role in Thousand-Block Pool Administration contracting process, as articulated in the December 22, 1999 Requirements Document, violates the Federal Advisory Committee Act and is illegal. Indeed, MCI's only comment on this issue is implicitly to recommend that the FCC avoid implementing the NANC's recent PA recommendation. As Telcordia stated in its February 16 letter, and at the February 16 meeting with FCC, Telcordia fully agrees that, as yet, the FCC has not violated any policy, regulation, or law. In fact, the sole purpose of Telcordia's February 16 letter was to highlight the inevitable violations of policy and law that would result if the FCC adopted the NANC's Thousand-Block Pool Administration recommendation. We agree with MCI in this regard. Any favorable action by FCC on NANC's current recommendation would be illegal.

CONCLUSION

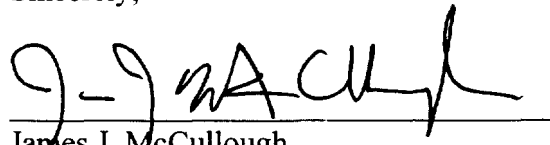
MCI, a common carrier interested in expediting the thousand-block pooling process, is less interested in the efficiency and expense of the pool's administration than the supposed speed with which it can gain access to this public resource. This is understandable, since any otherwise avoidable expense will be a uniform cost to all

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common carriers that will simply be passed on to the consumer. However, well-established FCC policies that favor full and open competition, and applicable federal law, do not allow the FCC merely to assign beneficiaries of public resources for the convenience of industry. Full and open competition among qualified companies willing and able to compete ensures, for the agency and the public at large, that the most qualified contractor will fulfill the FCC's requirements in the most efficient and most innovative manner. The FCC can capitalize on these and the other advantages of competition cited in Telcordia's February 16 comments in the very short time period it would take to conduct a competition for the PA contract, and without the delay inherent in any challenges to a non-competitive procurement that might be mounted. The FCC should therefore reject the NANC's recommendation and conduct a full and open competition for the Thousand-Block Pooling Administrator.

Sincerely,



James J. McCullough

Deneen J. Melander

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Counsel to Telcordia Technologies, Inc.

cc (via hand delivery):

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Hon. Susan Ness

Hon. Michael Powell

Hon. Harold Furchgott-Roth

Hon. Gloria Tristani

Yog Varma, Deputy Chief, Common Carrier Bureau

Charles Keller, Chief, Network Services Division

John Hoffman, Chair, NANC

Magalie Roman Salas, Secretary (re: *ex parte* statement, CC Docket 99-200, CC Docket 92-237)

April 10, 1998

From: Bellcore, Director of Numbering Strategies - Fred Gaechter

To: Members - North American Numbering Council (NANC)

Re: Number Pooling Administration

The North American Numbering Council (NANC) is currently considering a recommendation from its North American Numbering Plan Administration (NANPA) Working Group to award, on a non-competitive sole source basis, 1000 block number pooling administration to the NANPA organization - Lockheed Martin IMS. Based on the results of the last NANC meeting, it is anticipated that this recommendation will be discussed and resolved at the April NANC meeting.

Bellcore, a subsidiary of employee-owned Science Applications International Corporation (SAIC), is interested in competing in the business of number resource administration, and would like to offer our perspective on the Working Group's recommendation to the NANC members. It has been the practice to seek competitive bids for numbering resource administrators and successful bidders have been permitted to realize profits for their number administration activities. This practice has effectively made numbering resource administration a real "business" with competitive value. Bellcore and other potential bidders would be foreclosed from the 1000 block number pooling administration business if the Working Group's recommendation is adopted.

In this context, Bellcore offers the following points for your consideration:

- Since 1984, industry fora, and their members, that have dealt with the numerous numbering plan issues, have actively fostered full and open competition. Many of the current NANC member entities have successfully and appropriately carried the banner of competition with regard to their particular telecommunications markets. Several other NANC member entities have had local and federal regulatory oversight responsibilities, on the behalf of the telecommunications users, to ensure fair competition and the lowest possible subscriber rates. We strongly believe that these commitments to competition should continue, and not be set aside, for all aspects of numbering plan design and administration, including number pooling administration (1000 block and Telephone Number) - a market in which Bellcore wishes to participate.
- It is apparent that the North American telecommunications industry, including service providers and regulators, has determined that numbering plan administration should

be the subject of competitive bidding, and not be a monopoly function. There have been numerous national, regional, and local RFPs for numbering resource administrators and Bellcore understands that the industry fully intends to present an RFP for Telephone Number (TN) pooling administration in the future, thereby negating any intention or expectation of a number resource administrative monopoly. A sole source award to Lockheed Martin, the already-dominant provider of number administration services, for 1000 block administration is in opposition to the industry's intentions and would move number resource administration one step closer to a monopoly, particularly in the light of recent developments regarding Number Portability Administration Center (NPAC) operations. NPAC functions were not intended to be a monopoly market, and the existence of competitors provided an immediate alternative when one or another vendor was unable to complete its commitments.

- Competitive bids, as opposed to sole source awards, have been the tradition at all levels of government in the US because they are the best way to ensure the lowest price to the public, based on a specified set of common requirements. Sole source awards, especially to a dominant entity, have the potential for abuse that could result in the rate payer subsidizing a higher cost for number pooling administration than might have been necessary. "Potential" is a word that we are all familiar with. It was used extensively with regard to the NANPA function, e.g., potential for partiality, and should be equitably considered in the context of selecting a number pooling administrator.
- We believe that the offering of a non-competitive sole source award would establish an improper and undesirable NANC precedent for the future. Once established, such a precedent could even become a convenient basis for future decisions, e.g., "...after all we already gave a sole source award for 1000 block pooling administration." The potential for such precedent setting decisions has been emphatically avoided by all industry fora in the past, and, we believe, should be avoided in this instance as well.
- The NANC is the only numbering forum operating under the auspices of the FCC. Bellcore believes that if the NANC authorizes a non-competitive sole source award in the context of the most strongly competitive telecommunications industry in the world, that this will send the wrong message to the industry, local LLCs, and to state regulatory agencies, e.g., competition can be circumvented when it is deemed to be inconvenient. Furthermore, this will send a message to non-US entities interested in US telecommunications policy that notwithstanding our national commitment to competition, it can be dispensed with when it is convenient to do so.
- In recent months two local LLCs have issued RFPs seeking bids for the function of interim number pooling administrator at the 1000 block level. These RFPs have been for number pooling trials in only one or two NPAs. If competitive bids are appropriate for such a small environment, it would seem no more onerous to follow

the same process for the national number pooling administration function. These LLCs have conformed to the national policy of making all aspects of the telecommunications industry competitive. Why should the NANC undermine this?

- NANC awarding a non-competitive sole source award and, thereby increasing the scope of an already dominant entity's numbering administration, will have the effect of discouraging competitors. For entities to pursue competitive bids they need to first have an assurance that there will be competition and, second, to commit the resources to stay current with technologies, processes, and capabilities in order to be a viable competitor. If it becomes evident that competition in the telecommunications environment is not a given, those resources will not be committed. Potentially competitive entities will either withdraw from competition or not be able to effectively compete with the embedded, dominant, and, thereby, uniquely experienced entity that has received sole source awards. The result will be a self-perpetuating monopoly with no competitive benefits.
- Bellcore believes that in order to preserve competition by competent competitors, the NANC should consider regional number pooling administrators for 1000 block pooling, instead of a single national administrator. Selecting multiple administrators will ensure that pooling administration expertise will exist in more than one entity. Such multiple expertise would be particularly useful when transitioning from block administration to TN administration. Experience and expertise resident in multiple entities would provide a backup capability in a failure to perform situation, such as occurred with the NPAC function. In such a situation, there would be one or more other experienced entities prepared to take on the responsibility. If, as with the NPAC example, there were no experienced alternate provider(s), the administrative function would be significantly delayed or interrupted.
- The NANPA Working Group recommendation supports its position with concepts such as "streamlined administrative processes" and "simplifies the interfaces", in other words, convenience. Bellcore has actively promoted and observed the evolution of competition throughout the telecommunications industry and its multiple fora. Frequently, there were more convenient ways to accomplish what the industry has often reached consensus on. However, it was always agreed, particularly by the competitive entities, that competition was more important than mere convenience. Such deliberate decisions are apparent in numbering resource assignment guidelines and in dialing procedures that are not necessarily the most "convenient" to the users. It is inappropriate in the selection of a number pooling administrator to sacrifice competition to convenience, when we have not done so in myriad other areas of telecommunications generally, and number administration specifically.

Bellcore believes the above points to be basic to the continuing success of the competitive telecommunications environment in the US and thanks the NANC members for the opportunity to present them for their consideration.

Should there be any questions regarding the above information, please feel free to contact me at 732 699 5500 (Tel.), 732 336 5043 (Fax), agacchte@notes.cc.bellcore.com (email).